

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

TERRY E. BARNES,

Petitioner,

vs.

No. CV 19-00556 WJ/KRS

WARDEN MARK BOWEN and
ATTORNEY GENERAL FOR THE STATE
OF NEW MEXICO,

Respondents.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

THIS MATTER is before the Court under Fed. R. Civ. P. 41 on the Motion to Withdraw Habeas Corpus Petition Filed in the State of Colorado filed by Petitioner Terry E. Barnes (Doc. 5). The Court will grant the Motion and dismiss this case without prejudice to Petitioner's pending habeas corpus petition in *Barnes v. Bowen*, No. CV 19-00514 JB/KRS.

Petitioner, Terry E. Barnes, is a prisoner, convicted and sentenced in the State of New Mexico and incarcerated in New Mexico by the New Mexico Department of Corrections. (Doc. 1 at 1). Petitioner filed his Application for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 in the District of Colorado on June 13, 2019. (Doc. 1). The District of Colorado properly transferred the case to this District Court on June 14, 2019. (Doc. 3).

The Court takes judicial notice that Petitioner Barnes filed the identical Application for Writ of Habeas Corpus in this Court on June 3, 2019. *See Barnes v. Bowen, et al.*, No. CV 19-00514 JB/KRS; *Duhart v. Carlson*, 469 F.2d 471, 473 (10th Cir. 1972) (the Court may take judicial notice of its own records). Petitioner indicates that he filed the two habeas corpus petitions in both

Districts due uncertainty as to where to file and concerns regarding the statute of limitations. (Doc. 5 at 1).

On June 27, 2019, Petitioner Barnes filed his Motion to Withdraw Habeas Corpus Petition Filed in the State of Colorado. (Doc. 5). Petitioner seeks to dismiss his Application in this case on the grounds that it is unnecessary in light of the identical Application pending in CV 19-00514 JB/KRS. (Doc. 5 at 2). The District of Colorado was without jurisdiction over Petitioner's filing in this case, and properly transferred Barnes' Application to this Court. *See, e.g., Rumsfeld v. Padilla*, 452 U.S. 426, 442-43 (2004) (habeas corpus relief may only be sought in the District of incarceration); 28 U.S.C. § 1391(b) (establishing jurisdiction and venue for federal proceedings).

However, Petitioner already has an identical proceeding pending before this Court, and this case is duplicative and unnecessary. *Barnes v. Bowen, et al.*, No. CV 19-00514 JB/KRS. Under Fed. R. Civ. P. 41(a), a petitioner may voluntarily dismiss a proceeding. Therefore, the Court will grant Petitioner's Motion and will dismiss this case without prejudice to his pending Application in No. CV 19-00514 JB/KRS.

IT IS ORDERED that the Motion to Withdraw Habeas Corpus Petition (Doc. 5) is **GRANTED** and the Application for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (Doc. 1) filed by Petitioner Terry E. Barnes is **DISMISSED without prejudice** to Petitioner's pending Application in No. CV 19-00514 JB/KRS.


CHIEF UNITED STATES DISTRICT JUDGE